

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 COME-00 INT-05 AGR-05 IO-10 SCS-03

SSO-00 NSCE-00 INRE-00 USIE-00 CIAE-00 DODE-00 PM-03

H-02 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02

SS-15 ARAE-00 EB-07 OFA-01 SCA-01 DLOS-04 TRSE-00

CIEP-01 OMB-01 AID-05 /093 W
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O 221513Z JUL 75

FM AMEMBASSY NASSAU

TO SECSTATE WASHDC IMMEDIATE 6967

INFO COMDT COGARD WASHDC IMMEDIATE

COGDSEVEN MIAMI IMMEDIATE

C O N F I D E N T I A L NASSAU 1171

E.O. 11652: GDS

TAGS: EFIS BF

SUBJ: SPINY LOBSTER

REF: (A) NASSAU 1087; (B) NASSAU 1153

1. AS NOTED IN REF B, EMBASSY PROMISED TO SUBMIT FOR DEPARTMENT'S CONSIDERATION PROPOSED RESPONSE TO GCOB NOTE OF JULY 3, REF A. EMBASSY'S PROPOSED RESPONSE FOLLOWS:

QUOTE (1) (COMPLIMENTARY OPENING) CONCERNING THE EXCHANGE OF NOTES BETWEEN THE EMBASSY AND MINISTRY COMMENCING IN MARCH 1975, HAS THE HONOR TO REFER TO THE MINISTRY'S NOTE NO. 102 OF JULY 3, 1975 REGARDING THE BAHAMIAN SPINY LOBSTER, OTHERWISE KNOWN AS PANULIRUS ARGUS. IN THIS CONNECTION, THE EMBASSY TAKES NOTE THAT ON JULY 9, 1975 THE MINISTER OF AGRICULTURE, FISHERIES AND LOCAL GOVERNMENT OF THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS SIGNED AN OFFICIAL DECLARATION OF THE ADDITION OF THE BAHAMIAN SPINY LOBSTER (PANULIRUS ARGUS) TO THE CONTINENTAL SHELF FISHERIES
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RESOURCES WHICH APPERTAIN TO THE COMMONWEALTH OF THE

BAHAMAS.

(2) RESPONDING TO THE OBSERVATIONS MADE BY THE MINISTRY IN ITS NOTE OF JULY 3, WHICH PRECEDED THE DECLARATION, THE EMBASSY IS PLEASED THERE EXISTS AGREEMENT THAT DISCUSSIONS OUGHT TO BE COMMENCED TO ASSIST IN DETERMINING WHETHER THERE IS A BASIS FOR AGREEMENT ON THE ISSUES STEMMING FROM THE DECLARATION, AND THE LEGISLATION WHICH PRECEDED IT. THE EMBASSY, HAVING INDICATED PREVIOUSLY THE DESIRE OF ITS GOVERNMENT TO OPEN DISCUSSIONS BEFORE THE COMMENCEMENT OF THE 1975-76 FISHING SEASON, SUGGESTS THAT THOSE DISCUSSIONS BEGIN IMMEDIATELY, ACKNOWLEDGING, OF COURSE, THAT THEY MAY EXTEND BEYOND AUGUST 1. FURTHER, CONSISTENT WITH THE PRIME MINISTER'S DISCUSSION WITH THE AMBASSADOR OF JULY 3, THE EMBASSY UNDERSTANDS THAT THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS AT PRESENT HAS UNDER REVIEW PRINCIPLES WHICH IT WILL WISH TO ADVANCE AS A PART OF THE DISCUSSIONS AND THAT WHEN THE REVIEW IS COMPLETED, THE EMBASSY WILL BE ADVISED OF A DATE WHEN DISCUSSIONS CAN BE INITIATED.

(3) THE MINISTRY EXPRESSED ITS CONCERN OVER THE LIKELIHOOD OF PROBLEMS THAT MIGHT ARISE WITH NATIONALS UNDER THE JURISDICTION OF THE EMBASSY'S GOVERNMENT AS A RESULT OF THE ENFORCEMENT OF THE LEGISLATION AFTER AUGUST 1. AS IT HAS PREVIOUSLY STATED, THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHARES A CONCERN OVER THE PROSPECT OF CONFRONTATION SITUATIONS AND BELIEVES THAT BOTH GOVERNMENTS SHOULD TAKE STEPS TO PRECLUDE SUCH SITUATIONS FROM DEVELOPING. FOR ITS PART, IT HAS TAKEN STEPS TO INFORM NATIONALS UNDER ITS JURISDICTION OF THE IMPLICATION OF THE BAHAMIAN LAWS FOR THEIR ACTIVITIES AND TO ADVISE THEM TO RESPECT THOSE LAWS.

(4) THE EMBASSY NOTES THAT BAHAMIAN LAW ENFORCEMENT OFFICERS WILL ACT WITH DISCRETION DURING A SHORT PERIOD BEFORE ENFORCING THE LAW TO THE FULLEST EXTENT TO ALLOW FISHERMEN OPERATING IN THE AREA TO BECOME FAMILIAR WITH IT. IN THE EVENT THAT DISCUSSION MENTIONED IN PARAGRAPH 2 ABOVE ARE NOT COMPLETED PRIOR TO AUGUST 1, THE EMBASSY
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HOPES THAT THE MINISTRY WILL PROVIDE A MORE DEFINITIVE STATEMENT AS TO THE ELEMENTS OF ACTING "WITH DISCRETION" AND THE TIME PERIOD DURING WHICH THEY WOULD APPLY.

(5) THE GOVERNMENT OF THE UNITED STATES OF AMERICA HAS TAKEN NOTE THAT THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS DOES NOT FORSEE ANY DIFFICULTIES ON THE QUESTION OF THE DELIMITATION OF JURISDICTION BETWEEN OUR

TWO GOVERNMENTS WITH RESPECT TO THE AREAS OF THE CONTINENTAL SHELF OF THE COMMONWEALTH OF THE BAHAMAS FREQUENTED BY BAHAMIAN LOBSTER AND OFF WHICH SUCH LOBSTER IS CAUGHT. THE EMBASSY HAS BEEN INSTRUCTED TO ADVISE THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS THAT THE GOVERNMENT OF THE UNITED STATES OF AMERICA DOES NOT DISPUTE ITS SOVEREIGNTY OVER THESE AREAS, KNOWN AS THE BAHAMA BANKS, AND AGREES THAT WITH RESPECT TO OUR RECENT EXCHANGES AND THE PROSPECT OF DISCUSSIONS ON THE IMPLICATIONS OF BAHAMIAN FISHERIES LAWS, THERE IS NO PROBLEM OF GEOGRAPHIC DELIMITATION.

(6) (COMPLIMENTARY CLOSE) UNQUOTE.

2. DEPARTMENT WILL OBSERVE THAT OUR PROPOSED RESPONSE FOR THE MOST PART ATTEMPTS TO AVOID GETTING INTO THE DETAILS OF WHAT SHOULD COMPRISE THE HOPED FOR AGREEMENT. THIS IS OBVIOUSLY INAPPROPRIATE FOR THIS NOTE AND RATHER SHOULD BE THE FUNCTION OF THE NEGOTIATING PROCESS ITSELF.

3. THE EMBASSY HAS, HOWEVER, PROPOSED A RESPONSE TO TWO POINTS WHICH DO HAVE SUBSTANTIVE IMPLICATIONS:

(A) IN RESPONDING TO NUMBERED PARAGRAPH (2) IN THE BAHAMIAN NOTE (PARA 3 OF OUR PROPOSED RESPONSE), WE HAVE STATED THAT NATIONALS COMING UNDER THE JURISDICTION OF THE U.S. HAVE BEEN OR WILL BE WARNED TO CONFORM TO BAHAMIAN LAW. THIS IS, OF COURSE, A STANDARD POSITION, HOWEVER, IN CONTEXT IT CAN ONLY BE READ TO IMPLY AN ACCEPTANCE OF THE BAHAMIAN CONTINENTAL SHELF LEGISLATION. HOWEVER, AS NOTED IN REF B, DISCUSSIONS WITH THE DEPARTMENT SUGGEST THAT THERE ARE NO CONTRARY POINTS OF VIEW ON THIS QUESTION. FURTHERMORE, DEPARTMENTAL SPOKESMEN HAVE BEEN QUOTED AS CONFIDENTIAL

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ACKNOWLEDGING ESSENTIAL SIMILARITIES OF CONTINENTAL SHELF AND U.S. MAINE LOBSTER CONTINENTAL SHELF LEGISLATION. FINALLY, THE COAST GUARD DOES PROPOSE TO ISSUE A WARNING BASICALLY EMBODYING THE ACKNOWLEDGMENT OF BAHAMIAN JURISDICTION OVER THE LOBSTERS ON THE SHELF. FOR ALL OF THE FOREGOING REASONS AND IN ORDER TO REMOVE A "NON-ISSUE" FROM GETTING IN THE WAY OF THE REAL SUBSTANCE OF THE ISSUES WHICH SEPARATE US FROM THE GCOB, WE BELIEVE OUR SUGGESTED LANGUAGE IS APPROPRIATE.

(B) OUR RESPONSE, IN COMMENTING ON PARAS 4 AND 5 OF THE BAHAMIAN NOTE, EXPLICITLY ACCEPTS THE BAHAMIAN BANKS AS THE AREA IN WHICH THE LOBSTER FISHING WOULD TAKE PLACE AND AS BEING UNDER BAHAMIAN SOVEREIGNTY. THESE ARE THE FACTS AS WE UNDERSTAND THEM, BUT IF DEPARTMENT HAS

DIFFERENT VIEW ON THE MATTER WE ARE, OF COURSE, OPEN TO
COUNTERPROPOSAL.

4. EVEN THOUGH WE CONTINUE TO BELIEVE THAT THE PRIMIN'S
PROMISE TO REENGAGE THE AMBASSADOR ON THE ISSUE OF WHETHER
THE BAHAMAS IS PREPARED TO ENGAGE IN DISCUSSIONS, WHAT THE
GENERAL PRINCIPLES WILL BE WITHIN WHICH THE BAHAMAS
WILL PURSUE THOSE DISCUSSIONS AND THE TIMING FOR INITIATING
THOSE DISCUSSIONS, SHOULD AND WILL BE THE DEFINITIVE STATE-
MENT OF THE BAHAMAS POSITION, WE NEVERTHELESS BELIEVE
THAT IT IS IMPORTANT TO FORWARD A RESPONSE TO THE GCOB
JULY 3 NOTE. ASIDE FROM CLARIFYING THE POINTS MENTIONED
IN PARA 3 ABOVE, BY REPLYING WE WILL PRECLUDE ANY POSSIBLE
AMBIGUITY AS TO WHOSE COURT THE BALL IS IN.

5. REQUEST DEPARTMENT'S REACTION ASAP.
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Message Attributes

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